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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
SOUTHWESTERN BELL MOBILE SYSTEMS, INC.	)	
	)	
Petition for a Declaratory Ruling Regarding the Just and Reasonable Nature of, and State Law Challenges to, Rates Charged by CMRS Providers When Charging for Incoming Calls and Charging for Calls in Whole-Minute Increments	)	DA 97-2464

To: The Commission

REPLY COMMENTS OF COMCAST CELLULAR COMMUNICATIONS, INC.

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January 23, 1998

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Comcast Cellular Communications, Inc. ("Comcast"), by its attorneys, submits these Reply Comments in response to the above-captioned Petition for Declaratory Ruling filed by Southwestern Bell Mobile Systems, Inc. ("SBMS") and the Commission's Invitation for Public Comments, DA 97-2464, released in the captioned proceeding on November 24, 1997.

INTRODUCTION

Comcast does not intend to burden the Commission with further argument regarding the Smilow case itself, or the Smilow law firm's insistence that its multi-state class attack on SBMS' practice of rounding is, in actuality, a simple state law breach of contract case. We trust that SBMS will treat these arguments fairly and thoroughly. We will focus instead primarily on the opposition Comments filed by Carr, Korein, Tillery, Kunin, Montroy, Cates & Glass (hereafter "Carr, Korein"), a class action firm that is prosecuting two other "rounding up" cases against SBMS in the state courts of Texas and Illinois.

Perhaps the clearest conclusion that can be drawn from the opening round of Comments in this proceeding is that there is an immediate need for Commission guidance on the issues raised by the current wave of class litigation against CMRS carriers. It is also clear that the class action lawyers that stand to profit from these cases would prefer that the waters remain murky, and that the Commission leave in place the current case-by-case lawyers' lottery. Comcast files these Reply Comments principally to reiterate its position, summed up best perhaps by AirTouch in its opening Comments, that "[e]stablishing clarity in the legal principles governing these issues will benefit the public by reducing the administrative burdens associated with resolving these matters on a piecemeal, and perhaps inconsistent, basis in numerous local proceedings." AirTouch Communications, Inc.

Comments, at 1. We begin, then, by revisiting this central point in the context of two specific pending cases.

DISCUSSION

A. The Commission Should Act to Prevent the Development of Inconsistent and Contradictory State and Local Rules and Standards For the CMRS Industry.

In its opening Comments, Bell Atlantic Mobile Systems ("BAM"), one of Comcast's competitors in the Mid-Atlantic region, described its experience in a class action proceeding pending in the Superior Court of New Jersey captioned In Re Cellco Consumer Litigation ("Cellco"). BAM Comments, at 4-6. The Cellco case is being prosecuted by the same class action law firm that is prosecuting the Bancshares case against Comcast in Pennsylvania. Comcast Comments, at 4 n.3 & n.4, 20. The allegations in the Bancshares and Cellco cases are remarkably similar. As discussed in some detail in the opening comments of both BAM and Comcast, these cases challenge the quality of each carriers' service, and seek unspecified "improvements" in the standards of CMRS service.

As discussed by BAM in its opening Comments, the New Jersey trial court judge in the Cellco litigation has certified a class, "subjecting BAM to years of litigation costs, potentially millions of dollars in forced rebates, and court-ordered cellular system quality improvements." BAM Comments, at 5. By contrast, the Pennsylvania trial court in the Bancshares case stayed all discovery pending resolution of Comcast's motion to dismiss the proceeding, which remains pending. The Bancshares and Cellco cases present a stark example of the very real threat that state

courts may impose inconsistent or contradictory standards on wireless carriers as part of the current wave of class litigation spreading through the state courts. The Commission should act expeditiously to prevent this danger from becoming a reality, so that both Comcast and BAM can compete fairly, as the Commission intended, on the basis of customer choice, and not judicial fiat.

B. The Commission Should Not Be Misled by Carr, Korein's Reliance on Inapplicable Legal Doctrines: This is *Not* a Proceeding About "Complete Preemption."

Several of the opening Comments in this proceeding have urged the Commission to provide authoritative guidance to the courts regarding the Communication Act's regulatory scheme and the detariffing initiatives of the mid-1990s. Absent such intervention, the class action bar will continue to harbor fundamental misunderstandings about the governing law and, through its advocacy, continue to confuse some courts. See, e.g., BAM Comments, at 3; GTE Service Corp. Comments, at 8. Ironically, with the filing of its Comments in opposition to SBMS' Petition, Carr, Korein has single-handedly proved this point.[1]

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1. Comcast is not a party to the McKay or Sommerman class action proceedings that the Carr, Korein firm is prosecuting against SBMS, and is therefore not in a position to respond comprehensively to Carr, Korein's assertion that it is "not challenging the reasonableness of the rates charges by SBMS." Carr, Korein Comments, at 7-8. Comcast notes, however, that the Second Amended Class Action Complaint filed in the McKay proceeding and attached to Carr, Korein's opening comments as Attachment "1" demonstrates the ability of class action lawyers to disguise direct attacks on ratemaking practices as "nondisclosure" or "fraud" claims. Paragraph 27 of the Complaint alleges, for example, that "Southwestern Bell has the capacity to bill to the nearest second of airtime and does not disclose this

(continued...)

This is not, as Carr, Korein has argued, a proceeding about "complete preemption." Carr, Korein Comments, at 4 ("Petitioner has taken the unusual step of filing a veritable Petition for Declaratory Ruling ... that there is complete federal preemption of any state lawsuit challenging its practice."). The doctrine of "complete" preemption is relevant only where an action originally filed in state court is sought to be "removed" to federal court. Because removal jurisdiction is narrowly construed, with all doubts resolved in favor of remand -- and because it involves the application of a very different legal test -- the burden on a defendant to establish "complete preemption," as opposed to "ordinary preemption," is much heavier. ~~The Smiley action, about which SBMS has petitioned the Commission, is not in a removal or remand posture. Thus, the pertinent issue before the Commission is not one of "complete preemption," but "ordinary" or "defensive" preemption.~~

As is recognized by the cases upon which Carr, Korein has relied, this is a distinction of great significance. See, e.g., Weinberg v. Sprint, 165 F.R.D. 431, 437 (D.N.J. 1996)

1.(...continued)
material information to consumers." Carr, Korein Comments, Attachment 1, at ¶27. The remainder of the McKay Complaint focuses not on SBMS' alleged failure to disclose the practice of rounding generally, but the alleged failure of SBMS to explain in particular how the practice of rounding affects the customers' use of "free minutes" in the base portion of a given rate plan. Although phrased as "disclosure" claims, these claims in reality challenge the practice of rounding directly by suggesting that the practice should trigger unrealistic and impractical disclosure obligations. The McKay Complaint is thus an example of the kind of "artful pleading" referenced in Comcast's opening Comments.

(explaining the distinction between "actual conflict" preemption and "complete preemption" and noting that court's "complete preemption" decision would not preclude Sprint from raising "ordinary" preemption as a defense in state court); American Inmate Phone Systems, 787 F. Supp. 852, 854 (N.D. Ill. 1992) (explaining the doctrine of "complete preemption").[2] In effect, accepting Carr, Korein's invitation to rely on "complete preemption" cases in deciding issues of "defensive" preemption is the legal equivalent of confusing the criminal law's "beyond a reasonable doubt" standard with the civil law's standard of "preponderance of the evidence." Yet class action lawyers have been successful in a few circumstances in convincing state court judges to make just this legal error. It is for this very reason that Commission guidance on this issue is so crucial at this time.

The Commission should reject Carr, Korein's invitation to further confuse "complete" and "defensive" preemption principles. Contrary to Carr, Korein's assertions, courts have not "consistently held that the Communications Act does not preempt state court claims" like Carr, Korein's.[3] Indeed, in the defensive preemption context, precisely the opposite is true.

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2. The Baldin v. Southwestern Bell Mobile Systems, Inc., No. 96-CV-0260-PER (S.D. Ill. May 21, 1996) and Sommerman v. Dallas SMSA L.P., No. 3:96-CV-1129-J that Carr, Korein has attached as exhibits to its Comments are also only "complete preemption" decisions, as is Esquivel v. Southwestern Bell Mobile Systems, 920 F. Supp. 713 (S.D. Tex. 1996).

3. See Carr, Korein Comments, at 6.

The majority of courts addressing claims like Carr, Korein's have held that such claims are preempted. See, e.g., Rogers v. Westel-Indianapolis Co. d/b/a Cellular One, Marion Superior Ct., Civil Div. Cause No. 49D03-96-2-0295 (Ind. Super. Ct. July 1, 1996) (dismissing full minute disclosure case as preempted by Federal Communications Act) (attached at Tab C to Comcast's opening Comments); Hardy v. Claircom Communications Group, Inc., 86 Wash. App. 488, 937 P.2d 1128 (Ct. App. 1997) (affirming dismissal of complaint challenging carrier's alleged nondisclosures of "rounding up" on grounds of preemption); Simons v. GTE Mobil Net, No. H-95-5169 (S.D. Tex. April 11, 1996) (dismissing as preempted state law claims against cellular carrier arising from termination charges) (attached at Tab D to Comcast's opening Comments); Tenore v. AT&T Wireless Services, No. 95-2-27642-3 SEA (Wash. Super. Ct. June 17, 1997) (holding state law "nondisclosure" claims regarding measurement of billing interval preempted by Section 332(c)(3)(A) and barred by doctrine of primary jurisdiction) (attached at Tab E to Comcast's opening Comments); Winston v. GTE Communications Sys. Corp., Civ. Action No. H-96-4364 (S.D. Tex. June 27, 1997) (holding that claims challenging disclosure of billing practices for uncompleted calls are preempted) (attached at Tab F to Comcast's opening Comments).

C. The Commission Should Also Be Wary of Carr, Korein's Claim that Class Action Litigation Benefits Consumers.

Carr, Korein points to the settlements of class action cases against AirTouch Communications, Inc. and U.S. West New Vector Group as evidence that "legal actions in state court best serve to protect the interests of . . . consumers, and that the state court forum is the most practical and most suitable for the legal claims asserted against [CMRS providers.]" Carr, Korein Comments, at 11-12. Carr, Korein offers nothing by way of elaboration to explain how and why these particular settlements demonstrate the value of state class action proceedings in protecting the interests of consumers and the public. Indeed, Comcast's own experience suggests the contrary conclusion.

Like SBMS, Comcast has been the subject of several consumer class action lawsuits challenging its billing practices. In 1996, an organized group of class action law firms filed three identical Complaints simultaneously in the state courts of Pennsylvania, New Jersey and Delaware challenging Comcast's practice of "rounding up" and its alleged failure to disclose that it charges for cellular telephone service based on the duration of each cellular telephone call ("Send-to-End" billing).[4] This simultaneous multi-jurisdictional attack was designed to maximize the threat of inconsistent or contradictory

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4. See DeCastro v. AWACS, Inc., New Jersey Superior Court, Camden County, Civ. Action No. 1-96-CV-01452; Sanderson, Thompson, Ratledge & Zimny v. AWACS, Inc., Delaware Superior Court, New Castle County, C.A. No. 96C-02-0225 WTQ; Opalka, et al. v. AWACS, Inc., Pennsylvania Court of Common Pleas, Philadelphia County, No. 96-02-SD-0094.

state court rulings, and therefore maximize the pressure on Comcast to settle the matter out of court.

Comcast spent a substantial portion of the following year fighting a litigation war on three fronts -- devoting significant financial resources and management attention to complying with class counsel's discovery demands, briefing and researching pertinent legal issues, and gathering together the six years' worth of Welcome kits, marketing materials, contract agreements and other disclosures that proved Comcast's innocence. In the end, however, the threat of crippling costs of protracted litigation in three states required a settlement. That settlement benefitted class action counsel by hundreds of thousands of dollars -- as described in the Notice of Class Action Lawsuit and Proposed Settlement attached hereto at Tab A -- but gave customers only duplicative disclosures about practices of which they were already aware.

In fact, a substantial number of Comcast's customers lodged letters of objection to the Notice of Settlement regarding the litigation. We offer the following examples:

- **Thomas Ryan, Haverford, Pennsylvania[5]:**

  I would like to voice my strong objection to the application by Plaintiffs' attorneys for fees totaling $330,000 payable by Comcast as part of the "settlement."

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5. A copy of Mr. Ryan's August 12, 1997 letter is attached hereto at Tab B.

I am not a lawyer. I do not work for Comcast. . . . [but] I make the assumption that these costs -- both the Plaintiff attorney fees and the no doubt substantial amounts Comcast has spent defending itself -- are moneys which might otherwise have gone productively into maintaining and improving the Comcast system for the benefit of customers.

The argument that it is all for the "good of the customer" is on its face absurd. The customer saves pennies. The lawyer makes hundreds of thousands of dollars. And if the courts make frivolous litigation very profitable . . . the court and the people who pay the court via taxes and fees will only get more and more of it.

Payment of this kind of "award" sends another message to innovators that every technological advance that makes a system more efficient, more secure, or less expensive must be "fully disclosed" to all consumers -- or risk a predatory lawsuit. Dense, virtually unreadable, disclosures make choices between providers more, not less, difficult for the average consumer, and only create rich ponds for legal fishing expeditions. And a regulatory, not to say a social, nightmare. Are we soon going to have a suit for "rounding up" in milliseconds?

- **Robert C. Cole, Jr., Centerville, Delaware:**[6]

I am writing to express my objection to paying the proposed fees and expenses to the plaintiffs' attorney in the captioned case. Any amount paid to the plaintiff's attorneys would be unfair and unreasonable because it will ultimately be born by Comcast subscribers. While the cost of defending this unnecessary litigation must be paid by Comcast subscribers, it is adding insult to injury to require the subscribers to pay the plaintiffs lawyers as well. As a subscriber, I have gained nothing from this litigation. As the plaintiffs found, Comcast's billing

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6. Mr. Cole's August 8, 1997 letter is attached hereto at Tab C.

practices had been disclosed or accounted for before they entered the litigation.

- **John P. Schmitt, Princeton Junction, New Jersey:**[7]

. . . . As a member (by default) of the plaintiff Class, I derive no benefit from the proposed settlement. I will receive more unnecessary disclosure notices. Also, I will possibly be charged measurably more for cellular 'phone service than I would if Comcast were not required to pay the costs incurred by counsel for the plaintiff Class.

- **Eileen Carpenter, Philadelphia, Pennsylvania:**[8]

. . . . I strongly object to the counsel fees being requested by the plaintiffs. Comcast's billing system was well explained to me when I subscribed, and as noted in the mailing I received, is plainly spelled out in the Welcome Kit.

. . . I consider this a frivolous lawsuit. I cannot imagine how the plaintiffs spent $290,000 in counsel fees and $40,000 in costs without managing to spend the time to read the Welcome Kit Materials. . . . Comcast does not have a machine in their basement printing money. Any costs they incur will have to be recouped from charges to me and other subscribers, either from increased rates or reduction in the variety of free services Comcast provides to us.

- **David Caplin, Mt. Laurel, New Jersey:**[9]

There are three claims made against Comcast. All three of these claims were found to be invalid. As I was reading the information describing the claims, it was obvious to me that these claims were invalid. I have been

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7. Mr. Schmitt's July 16, 1997 letter is attached hereto at Tab D.

8. A copy of Ms. Carpenter's letter is attached hereto at Tab E.

9. A copy of Mr. Caplin's August 14, 1997 letter is attached hereto at Tab F.

> a Comcast subscriber for about seven years. I meticulously read the information in the agreement packet at the time. I had not read it again until two weeks ago. While reading the claims against Comcast it immediately jogged my memory. I said to myself, "I know that." I then went back to the agreement information and confirm my suspicion.
>
> For these reasons, I have chosen not to be a part of the class action. . . . I feel it would be a theft from my pocket to award any money of any kind to the plaintiff.

The responses quoted above represent fairly the views of the subscribers that responded substantively to the proposed settlement. Perhaps more importantly, not one of the subscribers that responded to the proposed settlement saw the settlement as conferring any benefit on them.[10] Thus, while Carr, Korein might indeed have a credible claim that lawyers benefit from the filing and settlement of these lawsuits, its conclusory contention that customers benefit from this process is dubious at best.

D. The Commission Should Declare That Retroactive Recalculation of Rates in the Class Action Damages Context is a Prohibited Form of Rate Regulation.

An overwhelming number of the Comments in this proceeding have referred the Commission to the significant authority that says that retroactive recalculation of charges through class action damages awards is tantamount to ratemaking

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10. Over 200 subscribers responded in writing to the settlement by submissions to the Court and counsel. Comcast will, if the Commission requests, submit copies of all of the subscriber responses.

and preempted by Section 332(c)(3).[11] Class action counsel Shapiro Haber & Urmy (hereinafter "Shapiro") has argued, however, that the Commission should not apply the important policy considerations underlying those decisions to the benefit of CMRS providers because, unlike the carriers at issue in those decisions, CMRS providers are not required or permitted to file federal tariffs. In so arguing, Shapiro has relied on a distinction that -- at least in this context -- is without a difference. While the filed tariff doctrine itself might no longer apply to the CMRS industry in the wake of detariffing (at least to the extent that the CMRS provider has no filed tariff during the pertinent period), it is simply wrong to say that the important policy choices reflected in the cited decisions -- policies which have meaning and significance independent of whether a carrier has tariff on file -- somehow evaporate in a deregulated and detariffed environment.

The "filed tariff doctrine" is, in essence, a judicially-crafted set of legal principles built to further two distinct but related policy choices. The first policy choice, sometimes referred to as the "nonjusticiability" strand, gives due deference to the unique expertise, knowledge and experience that regulatory agencies bring to the ratemaking process, and reflects a recognition that "judicial tribunals are not well

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11. See, e.g., BAM Comments, at 13-18; BellSouth Corp. Comments, at 7-9; Century Cellunet Comments, at 6; GTE Service Corp. Comments, at 6-8; Sprint PCS Comments, at 8; 360° Communications Co. Comments, at 6; Vanguard Cellular Sys., Inc. Comments, at 7-9.

suited to retroactive rate-setting in the face of a legislatively created rate-setting authority." Sun City Taxpayers' Assoc. v. Citizens Util. co., 847 F. Supp. 281, 288 (D. Conn. 1994), aff'd, 45 f.3d 58 (2d Cir. 1995), cert. denied, 116 S. Ct. 1693 (1995); Wegoland, Ltd. v. NYNEX Corp., 27 F.3d 17, 18 (2d Cir. 1994). The "nonjusticiability" strand admits to the havoc that would result should courts subvert the authority of the rate-setting bodies and undermine the regulatory scheme promulgated by the legislature by entering into the ratemaking process. Wegoland, Ltd., 27 F.3d at 18.

The second policy choice -- the "nondiscrimination" strand -- embodies the notion that the adjudication of rates by a regulatory body, as opposed to judicial forum, best ensures uniformity of rates. It is generally recognized that when a court enters into the ratemaking process by awarding damages, the retroactive relief awarded inevitably leads "to discrimination in rates in that [] victorious plaintiff[s] [] end up paying less than similarly situated non-suing customers." Id. (citing Keogh v. Chicago & Northwestern Railway Co., 260 U.S. 156, 163-64 (1922)). The "nondiscrimination" strand furthers the nondiscrimination policy choice by keeping rate-setting issues in the hands of regulatory authorities.

While CMRS carriers no longer file federal tariffs, it would be wrong to say that the policy concerns underlying the filed tariff doctrine no longer have vitality in the CMRS industry. Section 332(c)(3), for instance, is a powerful

recognition of the vitality of the "nonjusticiabilty" concerns implicated by judicial ratemaking; it constitutes a complete bar to judicial intervention in rates. The "nondiscrimination" strand is also alive and well and codified in Section 202 of the Act, which provides that all telecommunications customers must pay the same rate for the same service offered by any given provider -- a requirement notably not made dependent on whether a carrier has a tariff on file.

In the end, Shapiro's contentions on this issue amount to nothing more than a tiresome reworking of the argument commonly made by class action counsel with regard to the Commission's detariffing of the wireless industry. Shapiro in effect contends that the Commission's decision to forbear from enforcing the tariff provisions of the Act in the wireless industry has somehow narrowed the Commission's authority over rates, and left the states free to reach rate regulation through awards of damages. As Bell Atlantic Mobile noted in its opening Comments, it would be a perverse result of the detariffing decision to hold that Congress' deregulation of CMRS has somehow granted states and state courts "new powers to regulate a wireless carriers' rates by awarding . . . damages, powers that they did not possess before." BAM Comments, at 17 (emphasis added). Comcast, therefore, reasserts its request that the Commission issue authoritative guidance on this matter.

CONCLUSION

For the foregoing reasons, and those set forth in Comcast's Opening Comments, Comcast respectfully requests that the Commission provide guidance to the courts expeditiously in order to protect the goals of wireless deregulation against the significant threat currently posed by the wave of class actions that prompted this proceeding.

Respectfully submitted,

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January 23, 1998

CERTIFICATE OF SERVICE

I, Patricia A. Lee, hereby certify that true and correct copies of the foregoing Reply Comments of Comcast Cellular Communications, Inc., filed in connection with the above-captioned proceeding, were sent via **Hand Delivery** on January 23, 1998 to:

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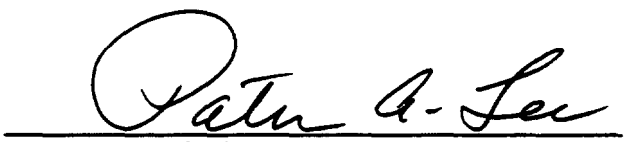


Patricia A. Lee

NOTICE OF CLASS ACTION LAWSUIT AND PROPOSED SETTLEMENT

TO: ALL SUBSCRIBERS TO CELLULAR TELEPHONE SERVICE PROVIDED BY COMCAST

In 1996, certain subscribers to Comcast's cellular telephone service filed three class action lawsuits against Comcast Cellular Communications, Inc. ("Comcast"). In these lawsuits, the subscribers alleged, among other things, that Comcast failed to disclose that its charges for cellular telephone service are based on the duration of each cellular telephone call measured between the point at which the telephone call is originated by pressing the "send" button and the point at which the subscriber presses the "end" button or otherwise terminates the call (referred to herein as "Send-to-End billing"). The subscribers also alleged that Comcast charged subscribers for time spent pressing and transmitting the personal identification number ("PIN") instituted to prevent cellular fraud, and that this practice increased the charges for cellular calls. The subscribers also alleged that Comcast charges for time in whole minute increments, rounded up to the next minute and that such "rounding up" also increased charges for cellular calls. The subscribers asserted that these practices violated various state consumer protection statutes, and constituted common law fraud, negligent misrepresentation, breach of contract, breach of an implied duty of good faith and fair dealing, and unjust enrichment, and the subscribers sought monetary and injunctive relief from Comcast.

Comcast has denied these allegations and the plaintiffs, after investigating Comcast's billing practices, have learned that Comcast automatically applies a five second credit to each cellular phone call made by any subscriber using a PIN. This credit was intended to eliminate any cost associated with the use of the PIN. Similarly, the plaintiffs, after investigating Comcast's billing and disclosure practices, have concluded that Comcast in fact discloses its Send-to-End and other billing practices in Welcome Kits and other mailings to subscribers, and made similar disclosures in marketing materials sent or otherwise made available to subscribers at various times since February 15, 1990.

Furthermore, the plaintiffs, after investigating Comcast's billing practices, have confirmed that Comcast's practice of "rounding up" billing time in whole minute increments was at all times disclosed to subscribers, and therefore did not improperly increase charges to Comcast's subscribers. Finally, the plaintiffs have found no evidence that Comcast ever engaged in any billing or disclosure practice that suggests it attempted to defraud, deceive or mislead its subscribers.

For all these reasons, Comcast and the plaintiffs seek to end this class action litigation. To accomplish this, Comcast has agreed, for settlement purposes only, to provide additional disclosures to its subscribers with regard to "Send-to-End" billing to ensure definitively that each subscriber receives further notice thereof. Comcast will adopt new Cellular Service Subscriber Agreements which contain language describing the manner in which the billing interval is measured. In addition, a similar notice will be given to all current Comcast subscribers in their monthly bills.

In connection with the settlement, counsel for the plaintiff Class have filed an Application with the Court seeking an award of counsel fees incurred prior to the date of Settlement in the amount of $290,000, with such sum to be paid by Comcast. In addition, counsel for the plaintiff Class intend to seek counsel fees incurred in connection with the administration and completion of the Settlement, and reimbursement of expenses, in an amount not to exceed $40,000, with such sum also to be paid by Comcast.

The proposed settlement of these lawsuits is now pending before the Honorable John A. Fratto, Judge of the Superior Court for the State of New Jersey, Camden County, in DeCastro, et al. v. AWACS, Inc., No. L-1715-96. The proposed settlement will be binding on the settlement class, which consists of all persons who were subscribers to cellular telephone services provided by Comcast or its affiliates or subsidiaries as of May 1, 1997, except those who specifically notify the Clerk of Court that they elect to be excluded from the settlement. If you subscribed to Comcast's cellular service as of May 1, 1997, please read this carefully to learn more about how this settlement will affect you.

As a result of this settlement, you release Comcast from all claims you may have against it relating to the subject matter of the lawsuit described above. The Settlement Agreement, which has been filed with the Clerk of Court, contains a full description of the claims being released. If you do not wish to be bound by the proposed settlement, you must write to the Clerk of Court for the Superior Court of New Jersey, Camden County, Camden County Hall of Justice, 101 S. 5th Street, Camden, NJ 08103 and let the Court know that you wish to be excluded from the Class. This written request must be postmarked on or before September 1, 1997; otherwise you will be bound by the settlement, if it is approved by the Court. Additionally, copies of your request for exclusion should be mailed to:

Sherrie R. Savett, Esq.
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103
Attorney for plaintiffs

and

Seamus C. Duffy, Esquire
DRINKER BIDDLE & REATH LLP
1345 Chestnut Street
Philadelphia, PA 19107
Attorney for defendant

The Court will hold a hearing on October 3, 1997 to consider the fairness, reasonableness, and adequacy of the proposed settlement and the amount plaintiffs' attorneys should receive for attorneys' fees and reimbursement of litigation costs and expenses. The hearing will be held in Courtroom 42, Camden County Hall of Justice, 101 S. 5th Street, Camden, NJ 08103 on October 3, 1997 at 9:30 a.m. If you have any objection to the proposed settlement, or the plaintiffs' counsel's application for attorney's fees and costs, you must send written objections postmarked on or before September 5, 1997 to Clerk of Court, Superior Court of New Jersey, Camden County, Camden County Hall of Justice, 101 S. 5th Street, Camden, NJ 08103. A copy of your objection should also be sent to:

Sherrie R. Savett, Esq.
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103
Attorney for plaintiffs

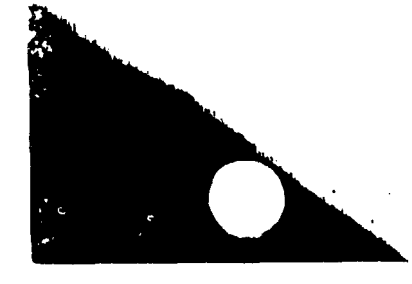
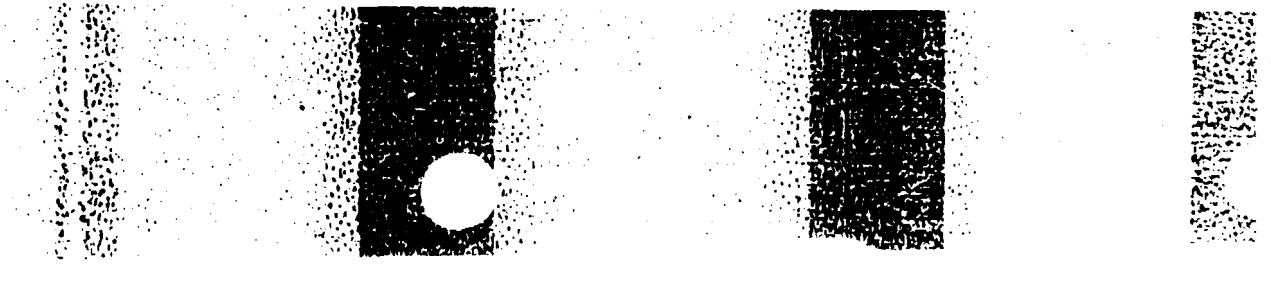
and

Seamus C. Duffy, Esquire
DRINKER BIDDLE & REATH LLP
1345 Chestnut Street
Philadelphia, PA 19107
Attorney for defendant

You may also appear in person or through a lawyer at the hearing to voice your objections to the settlement, the fees and costs or any other matter discussed in this Notice, but only if you have filed written objections with the Clerk of Court postmarked by the September 5, 1997 deadline. If you have no objections, you do not need to appear at the hearing.

This Notice contains a summary of the proposed settlement. The Settlement Agreement and all pleadings filed with the Clerk of Court in this lawsuit are available for inspection during business hours at the Clerk's office, Camden County Hall of Justice, 101 S. 5th Street, Camden, NJ 08103. Any questions you may have about the information in this Notice should be directed in writing to Clerk, Camden County Hall of Justice, 101 S. 5th Street, Camden, NJ 08103.

Dated: June 16, 1997
5407

730 Panmure Road
Haverford, PA 19041

August 12, 1997

Clerk of Court
Superior Court of New Jersey
Camden County Hall of Justice
101 S. 5th Street
Camden, NJ 08103

Re: Comcast settlement attorneys' fees

To the Court:

I would like to voice my strong objection to the application by Plaintiffs' attorneys for fees totaling $330,000 payable by Comcast as a part of the "settlement."

I am not a lawyer. I do not work for Comcast. I use the Comcast system minimally for convenience and occasionally in my business. What I know of this case comes from the notification enclosed in my last Comcast statement.

I make the assumption that these costs -- both the Plaintiff attorney fees and the no doubt substantial amounts Comcast has spent defending itself -- are moneys which might otherwise have gone productively into maintaining and improving the Comcast system for the benefit of customers.

If these truly extravagant and unwarranted fees are paid, the lawyers benefit (on both sides, I might add), and the system is dragged down once more by what is fast becoming a medieval system of legal "tolls" impacting on every conceivable business activity. We are not controlling change for the good of all. We are simply maintaining arrogant castles on the hill and taxing change for the benefit of the inside few. Wasn't the union of states established to minimize these kinds of unpredictable barriers and their associated social costs?

And why, by the way, is this in a state, not a federal court?

The argument that it is all for the "good of the customer" is on its face absurd. The customer saves pennies. The lawyer makes hundreds of thousands of dollars. And if the courts make frivolous litigation very profitable (I think the average plumber would not mind the rate), the court and the people who pay for the court via taxes and fees will only get more and more of it.

Payment of this kind of "award" sends another message to innovators that every technological advance that makes a system more efficient, more secure, or less expensive must be "fully disclosed" to all consumers -- or risk a predatory lawsuit. Dense, virtually unreadable, disclosures make choices between

providers more, not less, difficult for the average consumer, and only create rich ponds for legal fishing expeditions. And a regulatory, not to say a social, nightmare. Are we soon going to have a suit for "rounding up" in milliseconds?

Any customer who wants to find out the exact nature of his "contract" with Comcast can easily do so. It doesn't seem to me that information was intentionally and fraudulently concealed from any consumer.

All of this was readily available. But in this case, the Plaintiffs' attorneys seem to want $290,000 for what is essentially reading the label, or making a couple of simple phone calls. I would assume an intelligent and reasonably competent lawyer would do this before he or she went to the trouble and $175-per-hour expense of mobilizing a class action. But perhaps the temptation of the possible payoff and the implicit unspoken leverage of a public relations hit on the company were simply too strong to resist.

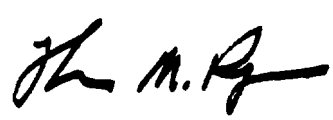
But I ask the court, is this behavior the court wants to go on record as rewarding? Under what principle or letter of the law do attorneys of failed cases have a right to compensation for expenses? But of course this is a "settlement." Is this to let the company get out of (at a modest price) the additional expense and uncertainty of prolonged litigation? I shudder to think what the attorneys' "application" might have been had their case carried -- even in part.

I also find it annoying that the identities, harm, and parallel interests of people initiating this suit are not made clear to other parties of the class action. This is in itself substantial non-disclosure. If anyone actually suffered grievous harm at an individual level, he or she could 1) take the business elsewhere 2) bring the matter up in the appropriate regulatory forum, or 3) simply spread the word.

The court should deny reimbursement for a bad case badly brought, and make it clear that further actions, however much they conform to the letter, violate the spirit of the law and will be dealt with appropriately.

Also, I do not wish such lawyers "administering" any settlement for me on the basis of their record in bringing this case. They cost too much.

Sincerely,



Thomas M. Ryan

Encl: An interesting letter to the editor on a related topic

Copies to:

Sherrie R. Savett, Esq.
BERGER & MONTAHUE, P.C.
1622 Locust Street
Philadelphia, PA 19103
Attorney for plaintiffs

Seamus C. Duffey, Esquire
DRINKER, BIDDLE & REATH LLP
1345 Chestnut Street
Philadelphia, PA 19107
Attorney for defendant

Fishing Expeditions Encumber State Courts

The July 9 Legal Beat column discusses the number of securities class-action lawsuits filed in federal and state courts. When Congress passed comprehensive securities litigation reform in 1995, its intention was to crack down on frivolous and abusive class actions that hurt companies, investors and job creation. Securities lawyers responded by shifting a large number of cases to state courts, where the new federal standards do not apply and the evidence required to bring an action is negligible.

You suggest that an increase in 1997 of the number of cases filed in federal court means that plaintiffs lawyers have adjusted to the higher pleading standards of the 1995 reforms. While that may be true, the number and nature of state cases continues to be a serious concern. As long as plaintiffs' lawyers are permitted to bring "federal-style" securities class actions in state court, where the antiabuse and investor-protection provisions of the 1995 Securities Reform Act do not apply, we will continue to see inappropriate claims lodged in an improper forum, and a continuation of abuses the Reform Act sought to curtail, including expensive and burdensome discovery "fishing expeditions" and a chill on corporate disclosure of forward-looking information to investors.

The ease with which a meritless claim can be filed in a state court, which has had no experience interpreting federal securities law, effectively deters investors from pumping crucial capital into companies with the highest potential for growth.

This shift in tactics by the plaintiffs may support a different conclusion: alleged violations of federal securities laws by companies traded on national stock exchanges potentially affecting a nationwide class of shareholders should properly be litigated in federal courts before federal judges. Thus, the plaintiffs' renewed enthusiasm for federal courts may validate federal preemption for such claims, reinforcing the need for adoption of the proposed Uniform National Standards Act.

MARK D. MICHAEL
Senior Vice President
General Counsel and Secretary
3Com Corp.
Santa Clara, Calif.

Wall Street Journal 8/5/97

ROBERT C. COLE, JR.
102 Thissell Lane
Centreville, DE 19807

August 8, 1997

Clerk of Court
Superior Court of New Jersey
Camden County
Camden County Hall of Justice
101 S. 5th Street
Camden, NJ. 08103

RE: DeCastro, et al. vs. AWACS, Inc

Dear Clerk of Court,

I am writing to express my objection to paying the proposed fees and expenses to the plaintiffs' attorneys in the captioned case. Any amount paid to the plaintiff's attorneys would be unfair and unreasonable because it will ultimately be borne by Comcast subscribers. While the cost of defending this unnecessary litigation must be paid Comcast subscribers, it is adding insult to injury to require the subscribers to pay the plaintiffs lawyers as well. As a subscriber, I have gained nothing from this litigation. As the plaintiffs found, Comcast's billing practices had been disclosed or accounted for before they entered the litigation. As such, the plaintiffs should shoulder the burden of their ill-advised action.

Sincerely,

Robert C. Cole, Jr

cc: Sherrie R. Savett, Esq.
BERGER & MONTAGUE, PC
1622 Locust Street
Philadelphia, PA 19103

Seamus C. Duffy, Esq.
DRINKER BIDDLE & REATH LLP
1345 Chestnut Street
Philadelphia, PA 19107

John P. Schmitt

17 Stonelea Drive
Princeton Junction NJ
08550-1907

July 16, 1997

Clerk of Court
Superior Court of New Jersey
Camden County
Camden County Hall of Justice
101 South 5th Street
Camden, New Jersey 08103

Dear Sir:

I received a Notice of Class Action Lawsuit and Proposed Setlement with my July bill from Comcast. That Notice invites the recipients to send you written objections to the proposed settlement or the plaintiff's counsel's application for attorney's fees and costs.

I am writing to express my objection to that part of the proposed settlement that would require Comcast to pay up to $330,000 to the counsel for the plaintiff Class. The reasons for my objection are:

1. According to the Notice, the allegations made in the 3 class action lawsuits have been shown to be incorrect.

2. Counsel for the plaintiff Class apparently could have determined that the allegations were incorrect without incurring the costs they now seek to recover. The statements in the second and third paragraphs of the Notice show clearly that the allegations were disproven "after investigating Comcast's billing practices."

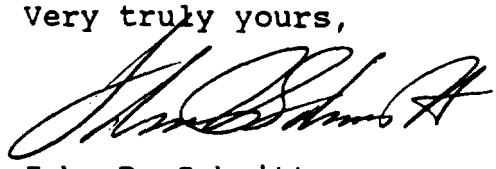
3. Had Comcast's billing practices been investigated and the same conclusions reached before the suits were brought, the suits probably would not have been brought.

4. Counsel for the plaintiff Class should not be compensated for incurring costs that need not have been occurred.

5. As a member (by default) of the plaintiff Class, I derive no benefit from the proposed settlement. I will receive more unneccessary disclosure notices. Also, I will possibly be charged measurably more for cellular 'phone service than I would if Comcast were not required to pay the costs incurred by counsel for the plaintiff Class.

6. The 3 class action lawsuits now have the appearance of a speculation for contingency fees that went bad. That is, the attorneys gambled and lost. I do not believe that their costs should be passed on to the public as additional operational costs for Comcast.

Very truly yours,



John P. Schmitt

c: Sherrie R. Savett, Esq.
Berger & Montague, P.C.
1622 Locust Street
Philadelphia, PA 19103

Seamus C. Duffy, Esq.
Drinker Biddle & Reath LLP
1345 Chestnut Street
Philadelpia, PA 19107

2337 North 52nd Street
Philadelphia, Pennsylvania 19131

Clerk of Court
Superior Court of New Jersey
Camden County
Camden County Hall of Justice
101 South 5th Street
Camden, New Jersey 08103

Dear Sir or Madam,

I have received notice of the proposed settlement in *DeCastro et al v. AWACS, Inc.* No. L-1715-96. I am a Comcast subscriber and a member of that settlement class.

I object strongly to the counsel fees being requested by the plaintiffs. Comcast's billing system was well explained to me when I subscribed, and as noted in the mailing I received, is plainly spelled out in the Welcome Kit. Since we are paying for air time, and not just land lines, I find the billing system reasonable and easy to understand. In addition, Comcast shields me from billing for unanswered incoming calls with a *free* voice mail box which picks up before the incoming call rings long enough to incur a charge.

I consider this a frivolous lawsuit. I cannot imagine how the plaintiffs spent $290,000 in counsel fees and $40,000 in costs without managing to spend the time to read the Welcome Kit materials. What is even more galling is that they now expect Comcast to pay these costs for a class action lawsuit supposedly representing *me*. I certainly was not consulted before it was filed. Comcast does not have a machine in their basement printing money. Any costs they incur will have to be recouped from charges to me and other subscribers, either from increased rates or reduction in the variety of free services Comcast provides to us.

I object to the award of any money to the plaintiffs to cover legal fees and costs. In a just world, the plaintiff's attorneys who did not have sense enough to kill this case aborning would be held responsible for *Comcast's* legal fees.

Sincerely,

Eileen Carpenter

Eileen Carpenter

cc. Sherrie R. Savett, Esq.
Seamus C. Duffy, Esq.

5 Barton Way
Mt. Laurel, NJ 08054
609-439-0870

August 14, 1997

Clerk of Court for the Superior Court of NJ
Camden County
Camden County Hall of Justice
101 S. 5th St.
Camden, NJ 08103

RE: Class action against Comcast

To Whom It May Concern,

I wish not to be a part of this frivolous suit.

Sincerely,

David J. Caplin

cc: Sherrie R. Savett
Berger & Montague, P.C.

Seamus C. Duffy
Drinker, Biddle & Reath

5 Barton Way
Mt. Laurel, NJ 08054
609-439-0870

August 14, 1997

Clerk of Court for the Superior Court of NJ
Camden County
Camden County Hall of Justice
101 S. 5th St.
Camden, NJ 08103

RE: Class action against Comcast

To Whom It May Concern,

There are three claims made against Comcast. All three of these claims were found to be invalid. As I was reading the information describing the claims, it was obvious to me that these claims were invalid. I have been a Comcast cellular customer for about seven years. I meticulously read the information in the agreement packet at that time. I had not read it again until two weeks ago. While reading the claims against Comcast it immediately jogged my memory. I said to myself, "I know that". I then went back to the agreement information and confirmed my suspicion. All of the alleged misinformation was really correct information.

For these reasons I have chosen not to be a part of the class action. In addition, I feel it would be a theft from my pocket to award any money of any kind to the plaintiff. The plaintiff took it upon themselves to erroneously charge and bring a frivolous law suit against Comcast. They should not be reimbursed for making a travesty of the American legal system.

Sincerely,

David J. Caplin

cc: Sherrie R. Savett
Berger & Montague, P.C.

Seamus C. Duffy
Drinker, Biddle & Reath